



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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CIVIL RIGHTS

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In Reply Refer to:

EPA OCR File No.: 10R-98-R2

Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1011

Kathryn Garcia, Commissioner
New York City Department of Sanitation
Central Correspondence Unit
346 Broadway, 10th Floor
New York, New York 10013

Re: Letter of Closure of Administrative Complaint

Dear Commissioners Seggos and Garcia:

This letter concerns the administrative complaint submitted to the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) by United States Congressman José E. Serrano on behalf of his constituents in the South Bronx area of New York City, dated May 26, 1998, supplemented on December 23, 1998, and on May 16, 1999. The complaint alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) as amended, 42 United States Code (U.S.C.) §§ 2000d to 2000d-7, and EPA's implementing regulations found at 42 U.S.C. Part 7, by the New York State Department of Environmental Conservation (NYSDEC)¹ and the New York City Department of Sanitation (DSNY).² This letter addresses the following allegations, which were accepted by OCR against the NYSDEC and DSNY on March 11, 1999, and October 25, 1999, respectively:³

Allegation 1 - NYSDEC's renewal of solid waste permits for the Triboro Fibers facility on February 10, 1998, and renewal of a permit for the A.J.

¹ NYSDEC receives federal funds from EPA.

² Formerly referred to as NYCDOS.

³ Acceptance of Complaint letter from Anne Goode, Director, OCR, EPA to Complainants, NYSDEC (March 11, 1999). See also Acceptance of Complaint letter from Anne Goode, Director, OCR, EPA to Commissioner Kevin Farrell, DSNY (October 25, 1999).

Recycling facility on May 5, 1998,⁴ results in a discriminatory effect on African Americans and Hispanics.⁵

Allegation 2 - DSNY's renewal of permits for waste transfer stations (WTSs) in the South Bronx contributes to the clustering of WTSs and disproportionate environmental and public health burdens in two predominantly minority community districts while benefiting New York City's predominantly white community districts.⁶

As explained more fully below, OCR is closing this matter against NYSDEC as it relates to the Triboro Fibers facility because the facility located at the 770 Barry Street address location is no longer operational.

OCR is also closing the inquiry into the allegation against NYSDEC as it relates to the permitting of the A.J. Recycling facility based on a number of considerations including: reports submitted to NYSDEC reflecting the facility's reduced contribution to the degradation of regional air quality; special permit conditions and operational changes that have occurred at the facility; and improvements to the general waste management operations. Collectively, these factors show changes in the overall circumstances since the complaint was filed.

Ultimately, there is insufficient evidence to show that the proposed emissions from the A.J. Recycling facility cause or contribute to unhealthy air quality levels or cause or contribute to degradation in local air quality. Accordingly, there is also insufficient evidence to conclude that any emissions from the A.J. Recycling facility's proposed modifications would contribute to air quality impacts in a discriminatory manner on the basis of race, color, or national origin.

In addition, OCR is closing its inquiry into the allegation relating to DSNY because it has not been a recipient of EPA federal financial assistance since December 31, 2000.⁷

I. BACKGROUND

Complainants in this matter are a group identified as "Concerned Citizens." In a letter dated May 26, 1998, Concerned Citizens submitted a Title VI complaint which alleged that the residents living in the South Bronx communities were experiencing

⁴ The original accepted allegation incorrectly identified both facilities as receiving solid waste permit renewals. The A.J. Recycling facility did receive a solid waste permit, but Triboro Fibers was a recyclables handling and recovery facility (RHRF). RHRFs are required to be registered with (rather than permitted by) the NYSDEC. The original allegation did not explain this distinction.

⁵ See footnote 3 above.

⁶ See footnote 3 above.

⁷ According to U.S. EPA's Integrated Grant Management System Database, EPA Region 2 provided a grant to DSNY on September 29, 2000. The project ended on December 31, 2000. Notwithstanding this change in recipient status, this letter will include information about the allegations related to DSNY.

discriminatory environmental and public health burdens due to the number of waste transfer stations located in their communities.⁸ Congressman Serrano, who represents the 15th Congressional District of New York in the Bronx, subsequently provided OCR with supplemental information on behalf of his constituents.⁹

NYSDEC is a recipient of EPA financial assistance. It is empowered to conserve, improve and protect New York state's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.

NYSDEC regulates construction and demolition (C&D) debris processing facilities through permitting or registration.¹⁰ Facilities processing uncontaminated C&D debris are registered, and facilities processing C&D debris that is contaminated and/or commingled with other solid waste are permitted. NYSDEC regulates recyclables handling and recovery facilities (RHRFs) solely through registration. NYSDEC also issues permits statewide to WTSs that receive 12,500 tons (50,000 cubic yards) or more of household waste per year, and registers WTSs that receive less than this amount per year.

NYSDEC regulates the A.J. Recycling facility as a permitted C&D debris processing facility. A.J. Recycling facility is located within an area zoned predominantly for manufacturing purposes (M-1 and M-3). According to zoning records, A.J. Recycling is surrounded by an industrial district for at least a quarter of a mile. NYSDEC also regulated the Triboro Fibers facility as a registered RHRF.

As stated above, DSNY has not been a recipient of EPA federal financial assistance since December 31, 2000. However, it is responsible for managing New York City's solid waste, which includes garbage and recycling collection, street cleaning, and snow removal. Title 16, Chapter 4 of the Rules of the City of New York identifies the rules and regulations promulgated by DSNY applicable to transfer stations, including but not limited to C&D debris transfer stations, such as A.J. Recycling. DSNY has promulgated general and specific regulations applicable to non-putrescible solid WTSs, C&D debris transfer stations and fill material transfer stations, putrescible solid waste transfer stations, and intermodal solid waste container facilities (facilities served by rail or vessel transporting containerized solid waste).

COMPLAINANT'S ALLEGATIONS AND SUPPORTING INFORMATION

The Concerned Citizens complaint named both DSNY and NYSDEC as respondents because they issued construction and operation permits to the facilities.

⁸ Letter from Concerned Citizens to Jeanne M. Fox, EPA Regional Administrator, Region 2 (May 26, 1998).

⁹ This information is discussed further below.

¹⁰ New York State regulations pertaining to solid waste management facilities, including WTSs, C&D debris processing facilities, and RHRFs, are found in the New York Code of Rules and Regulations Part 360.

Specifically, the complaint states that NYSDEC issued a renewal for the Triboro Fibers facility and a permit for the A.J. Recycling facility within 180 calendar days prior to the filing of the Title VI complaint.¹¹ In Congressman Serrano's December 23, 1998 letter, he alleged that permitting actions by DSNY and NYSDEC were specific discriminatory acts that occurred within 180 calendar days prior to the May 29, 1998 complaint filing.¹²

The complaint asserts that there were over sixty waste facilities in Community Boards 1 and 2,¹³ including approximately thirty-five WTSs, several sewage treatment plants, a major bio-solids processing facility, numerous automotive yards, and metal finishing shops.¹⁴ Additionally, the complaint states that the area has more land zoned for M-3 usage (land reserved by the city for the most noxious uses) than any other area in the city.¹⁵

The complaint further states that based on the 1990 U.S. Census, the district has a total population of 581,053, of whom 342,897 (59.0%) are Hispanic and 199,808 (34.4%) are African American. The complaint also states that these minority groups make up 95% of the Congressional District and that Community Board 1 has a total population of 77,214, of whom 51,627 (66.9%) are Hispanic and 23,356 (30.5%) are African American. According to the complaint, Community Board 2 has a total population of 39,443, of whom 31,115 (78.9%) are Hispanic and 7,463 (9.7%)¹⁶ are African American.

Finally, the complaint outlines the alleged health impacts experienced by the residents of the South Bronx, which include increases in:

- asthma rates;
- respiratory diseases;
- pneumonia;
- influenza; and
- skin/breast cancer.¹⁷

¹¹ Letter from Congressman Jose E. Serrano *et al.* to Anne Goode, Director, OCR, EPA (December 23, 1998). During the course of its investigation, OCR learned that the Triboro Fibers facility, which is a RHRF, was only registered with the state and was not permitted.

¹² Letter from Concerned Citizens to Jeanne M. Fox, EPA Regional Administrator, Region 2 (May 26, 1998).

¹³ Community Boards 1 and 2 occupy the south-southwest tip of the Bronx, along the East River from the outlet of the Hudson River to the outlet of the Bronx River. They include the Port Morris, Mott Haven, Melrose, and Hunts Point neighborhoods.

¹⁴ Letter from Congressman Serrano to Anne Goode, Director, OCR, EPA (December 23, 1998).

¹⁵ Letter from Concerned Citizens to Jeanne M. Fox, EPA Regional Administrator, Region 2 (May 26, 1998).

¹⁶ According to the 1990 Census data, the percentage for African Americans in Community Board 2 was 19%.

¹⁷ Administrative Complaint supplement letter from Congressman Serrano to Ann Goode, Director, OCR, EPA, page 4. (December 23, 1998).

The complaint cites statistics compiled in various studies conducted in the 1980s and 1990s by the New York State Department of Health (NYSDOH), the United Hospital Fund, and the Mount Sinai Medical Center, which describe the Hunts Point and Mott Haven communities as suffering the highest hospitalization rates for asthma in New York, as well as the United States.¹⁸

In addition, the complaint cites to: "1) a 1993 study depicting the asthma hospitalization rate for children ages 0-17 years old in these communities was over 18 per 1,000 on average, more than three times the national rate for this age group, and over twice the city rate; and 2) a 1998 health study conducted by the Hunts Point Childhood Health Promotion Initiative and the NYSDOH that included the responses of over 2,500 children attending three public schools in Hunts Point, which found that over 21% of the children surveyed have asthma."¹⁹

EPA'S ACTIONS BETWEEN 1998 – 2009

When the waste transfer station issues were brought to EPA's attention, the community alleged it was suffering from air quality, traffic, litter, noise and other impacts resulting from the proliferation of waste transfer stations in the South Bronx. Moreover, with the prospect of closing Staten Island's Fresh Kills landfill (the nation's largest at the time), the affected community was apprehensive about the Fresh Kills landfill closure exacerbating the conditions for the South Bronx. EPA worked with the community on an ongoing basis to provide technical assistance on waste management and air quality. For example, EPA Region 2 served in an ombudsman role to channel community concerns to the appropriate city and state agencies for action. EPA Region 2 also served on the City's Fresh Kills Closure Task Force and raised community concerns.

In November 1998, EPA Region 2 co-organized a National Environmental Justice Advisory Committee (NEJAC) tour of waste transfer stations in New York City. Both Congressman Serrano and Congresswoman Nydia Velazquez participated in the event. In addition, Congressman Serrano secured \$3.85 million in Special Appropriations, which EPA used to provide a series of grants between 1999 and 2009 to the NYU School of Medicine and NYU's Wagner Graduate School of Public Service. The funds were also used in the South Bronx for air monitoring studies, human exposure studies at schools, Geographic Information Systems mapping and community education and engagement.

As a result of EPA's involvement in the South Bronx and similar impacted communities, EPA published "*Waste Transfer Stations: A Manual for Decision-Making*" in 2002."²⁰ In publishing this document, EPA intended to help state and local decision makers understand best practices for waste transfer station siting and

¹⁸ Administrative Complaint supplement letter from Congressman Serrano to Ann Goode, Director, OCR, EPA, page 4 (December 23, 1998).

¹⁹ *Id.*

²⁰ EPA's Office of Solid Waste, members of the Solid Waste Association of North America Focus Group and the NEJAC Waste Transfer Station Working Group reviewed and provided comments on this draft document.

operation. In the years since the complaint was filed, changes made by New York City and the NYSDEC in planning, policy, regulatory and enforcement actions, as further discussed in this letter, have improved environmental conditions in the community in terms of waste transfer station impacts.

NYSDEC'S COMMISSIONER POLICY 29

On March 19, 2003, NYSDEC issued Commissioner Policy 29 (CP-29),²¹ which applies to C&D facilities. This policy provides guidance for incorporating environmental justice concerns into the NYSDEC's environmental permit review process and its application of the State Environmental Quality Review Act. The policy also incorporates environmental justice concerns into some aspects of the NYSDEC's enforcement program, grants program and public participation provisions.

For example, upon initial receipt of a solid waste permit application or application to increase the design capacity or tonnage allowed for management under an existing permit, NYSDEC conducts a preliminary screen to identify whether the proposed action is in or near a potential environmental justice area(s) and to determine whether potential adverse environmental impacts related to the proposed action are likely to affect a potential environmental justice area(s).²² This determination is made through the use of a geographic information system application that examines the potential adverse environmental impacts on any census block groups that have either low-income or minority communities, each of which is defined in CP-29.²³ Those permit applications which possibly may have impacts on potential environmental justice areas were subject to the procedural requirements contained in CP-29.²⁴ A common trait among those types of applications is the requirement for the development of an enhanced public outreach plan to engage the public in a dialogue on potential project impacts.²⁵

DSNY'S COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

In September 2006, DSNY submitted its Comprehensive Solid Waste Management Plan (SWMP) to NYSDEC.²⁶ According to DSNY, a key principle that guided the development of the SWMP was to "treat each borough fairly;" i.e., that responsibility for the City's waste management system should be allocated equitably throughout the City, in each of the five boroughs.²⁷ The SWMP called for the establishment of four converted marine transfer stations (MTS) – two in

²¹ <http://www.dec.ny.gov/regulations/36951.html>.

²² *Id.*

²³ *Id.*

²⁴ Letter with list of WTSs in Community Boards 1 and 2 in 1998 and 2013 from Kenneth B. Brezner, P.E., Regional Materials Management Engineer, NYSDEC, Region 2 to Vicki Simons, Acting Director, OCR, EPA (May 15, 2013).

²⁵ *Id.*

²⁶ Letter from Carl Johnson, Deputy Commissioner, NYDEC to Harry Szarpanski, P.E., Assistant Commissioner, DSNY (October 27, 2006).

²⁷ http://www1.nyc.gov/assets/dsny/downloads/pdf/about/laws/swmp_exec_summary.pdf.

Brooklyn, one in Queens, and one in Manhattan, as well as a truck-to-rail waste transfer station in Staten Island - as key elements to support this principle. NYSDEC approved the SWMP on October 27, 2006.²⁸ With regard to implementation of the SWMP, DSNY entered into a 20-year contract with Waste Management, Inc. to deliver all Bronx refuse to the Harlem River Yards facility, where it will be transported for final disposal outside of the City via rail.²⁹

Moreover, the SWMP, which NYSDEC approved, states that DSNY will improve conditions at waste transfer stations, including those in the South Bronx, by taking actions identified in its SWMP, which include:

- Implement more stringent operation and maintenance requirements, such as restrictions on air emission from stationary equipment and non-road vehicles and installation of state-of-the-art odor control equipment at all putrescible transfer stations;
- Impose limitations on the siting of new solid waste transfer stations and the expansion of existing facilities;
- Address truck traffic by conducting a feasibility study of redirecting truck routes; and
- Redistribute/limit capacity in communities with greatest concentration of transfer stations.

II. FACTUAL FINDINGS

EPA gathered information from NYSDEC and DSNY regarding the Triboro Fibers facility and the A.J. Recycling facility, as well as information about overall changes that have affected WTSs in New York City in recent years.

A. ALLEGATION 1 - NYSDEC'S RENEWAL OF SOLID WASTE PERMITS FOR THE TRIBORO FIBERS FACILITY ON FEBRUARY 10, 1998, AND RENEWAL OF A PERMIT FOR THE A.J. RECYCLING FACILITY ON MAY 5, 1998, RESULTS IN A DISCRIMINATORY EFFECT ON AFRICAN AMERICANS AND HISPANICS.

Triboro Fibers Facility

The Triboro Fibers facility has not operated at the 770 Barry Street address since September 10, 2003.³⁰ NYSDEC provided OCR with the letter that described the closure certification for the Triboro Fibers facility, which was a facility leased by Triboro Fibers, Inc. to sort, recycle and ship newsprint and related paper recyclables.

An NYSDEC inspection of the Triboro Fibers facility took place prior to April 29, 2003, which verified that there was no waste or recyclable material visible outside

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter from Earth Tech Northeast, Inc. to Armand De Angelis, Division of Solid and Hazardous Materials, Region 2, NYSDEC (July 10, 2003).

the storage areas.³¹ This location is now occupied by a local food supplier, Casablanca Commissary, Inc.³² NYSDEC conducted a final inspection on September 8, 2003, in order to determine compliance with the closure requirements of 6 CRR-NY Part 360.³³

Triboro Fibers Inc. requested that an environmental engineering consultant company, Earth Tech Northeast, Inc., assist in completing the facility's closure certification. On June 3, 2003, Earth Tech Northeast, Inc. performed a closure certification inspection of the facility and found no evidence of any remaining recyclables.³⁴

Because the Triboro Fibers facility at the 770 Barry Street location is no longer operational, the allegation as to this facility is rendered moot. Accordingly, OCR is administratively closing the portion of the complaint against NYSDEC involving Triboro Fibers and will take no further action on it effective the date of this letter.

A.J. Recycling Facility

As noted previously, NYDEC regulated A.J. Recycling as a permitted facility because it processes C&D debris that is contaminated and/or commingled with other solid waste.

A.J. Recycling Facility's Permit

OCR's inquiry revealed that NYSDEC has made changes in its permit requirements for C&D debris processing facilities, such as A.J. Recycling. Specifically, NYSDEC requires that all processing, tipping, storage, compaction and related activity be conducted in an enclosed or covered area.³⁵ Moreover, the SWMP, which was approved by NYSDEC, states that DSNY will address the siting of C&D facilities and other waste facilities in the South Bronx community by meeting the stated goals of its SWMP, which include:

³¹ *Id.*

³² <http://www.nyc.gov/html/doh/downloads/pdf/cdp/licensed-commissaries-depots.pdf>.

³³ 6 NYCRR 360-1.14(w). The requirements under this regulation include the following:
The owner or operator of any active or inactive solid waste management facility must, upon termination of use, properly close that facility and must monitor and maintain such closure so as to minimize the need for further maintenance or corrective actions and to prevent or remedy adverse environmental or health impacts such as, but not limited to, contravention of surface water and groundwater quality standards, gas migration, odors and vectors. Termination of use includes those situations where a facility has not received solid waste for more than one year, unless otherwise provided by permit, or if the permit has expired. Termination of use also results from permit denial or order of the commissioner or of a court. Specific closure measures which may also include corrective actions as specified in this Part are subject to approval by the department.

³⁴ Letter from Earth Tech Northeast, Inc. to Armand De Angelis, Division of Solid and Hazardous Materials, Region 2, NYSDEC. (July 10, 2003).

³⁵ 6 NYCRR 360-11.4

- Expansion of barge and rail export of commercial waste;
- Redistribution of commercial waste flow;
- Minimizing truck trips associated with disposal of Manhattan's commercial waste; and
- Limiting siting of new facilities in communities with the greatest concentration of transfer stations.³⁶

OCR also learned that facilities possessing a Part 360 permit, including the A.J. Recycling facility, must operate with special permit conditions.³⁷ These special conditions, which were present in the A.J. Recycling facility's 2011 permit, include, but are not limited to the following:

Except as provided in subparagraph (b) of this Special Condition, any proposed change, including but not limited to one that would (i) affect the hours of facility operation; or (ii) increase the volume(s) or vary the type(s) of any waste accepted at the facility; or (iii) increase the parking or queuing of vehicles associated with the subject facility; or (iv) increase the physical extent of the facility; or (v) increase the transportation, noise, odor, dust, or other impact of the facility, requires prior written authorization from the Department in the form of a permit or permit modification. No such change is to be initiated unless and until first obtaining such permit or permit modification.³⁸

There must be no on-street truck queuing in association with the operation of the subject facility.³⁹

Before changing the time that a facility processing or storage area would be periodically cleared of material, as specified in Section 4.16 of the Engineering Report cited in Special Condition 16, above, the Permittee must request such change in writing and receive the Department's written authorization for such change.⁴⁰

DSNY has renewed the facility's permit annually since 2003.⁴¹ To obtain renewal, the facility must remain in compliance with DSNY's operating rules and with the applicable regulations of the NYSDEC.⁴² Renewal requires payment of a fee and

³⁶ http://www1.nyc.gov/assets/dsny/downloads/pdf/about/laws/swmp_exec_summary.pdf.

³⁷ The New York State SWMP administers Part 360 permits, registrations, variances and other permit-related determinations regarding the construction and operation of solid waste management facilities. See also <http://www.dec.ny.gov/chemical/8498.html>.

³⁸ A.J. Recycling Inc., DEC Permit No. 2-6007-00137/00001 page 3 17. a (June 29, 2011).

³⁹ *Id.* at 4. 24.

⁴⁰ *Id.* at 4. 27.

⁴¹ Letter from Steven N. Brautigam, Assistant Commissioner, DSNY to Vicki Simons, Acting Director, OCR, EPA at page 2. (July 10, 2013).

⁴² *Id.*

submission of an annual report by a certified engineer that the facility complies with applicable manufacturing district performance standards of NYC's Zoning Resolution, which relate to noise, particulate matter, odor and enclosure.⁴³

As required by New York Code of Regulations, the A.J. Recycling facility is listed in New York City's SWMP as one of the private facilities upon which the City/planning unit relies to process commercial sector solid waste, including waste from residential construction and renovation projects.⁴⁴ Pursuant to DSNY's authority under the City Charter and Administrative Code, DSNY's regulation involves regular inspections (3-4 full inspections, plus several drive-by inspections per month).⁴⁵ DSNY issued a permit modification in 2003 to allow A.J. Recycling to expand the area of its facility by adding lots 340 and 342, which did not involve any increase in storage or throughput volume or additional processing equipment.⁴⁶ An environmental review was conducted for the facility and a Negative Declaration was issued in support of the finding that the expansion would not result in a significant adverse environmental impact.⁴⁷

The A.J. Recycling facility was granted a permit renewal on May 5, 1998, through May 2003, which outlined a number of changes, including the authorization to install a sand interceptor and detention tank in a vacant lot.⁴⁸ As listed below, additional permit modifications include both operational changes and site reconfigurations:

- On December 1, 2004, a monitor account was added. (This resulted in an increase in NYSDEC inspections at the facility).⁴⁹
- On March 12, 2007, the facility added a misting system (misting system increases dust control).⁵⁰
- On June 29, 2011, the facility added a picking station, scale, and another lot across the street. (The picking station increases recycling, the scale addresses the Department of Transportation's road weight restrictions and the additional lot accommodates truck queuing).⁵¹

⁴³ *Id.*

⁴⁴ *Id.* at 1-2.

⁴⁵ Letter from Steven N. Brautigam, Assistant Commissioner, DSNY to Vicki Simons, Acting Director, OCR at page 2, EPA. (July 10, 2013). *Id.* at 1.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Permit renewal letter from John J. Ferguson, Regional Permit Administrator, NYSDEC, Division of Environmental Permits, Region 2 Office to Paul D. Casowitz, Sive, Paget & Riesel. (May 5, 1998).

⁴⁹ Email from Kenneth B. Brezner, P.E., Regional Materials Management Engineer, Region 2, Division of Materials Management, NYSDEC to George Pavlou, Deputy Regional Administrator, Region 2, EPA. (November 25, 2011).

⁵⁰ *Id.*

⁵¹ *Id.*

In 2009, DSNY reviewed an application to reconfigure the facility and authorized the following:

- Add three lots across from the Faile Street address, to provide truck staging, truck scales and waste truck queuing as part of facility operations. This would improve the facility operations, and reduce the queuing of trucks on local streets;⁵²
- Replace a diesel-powered screener with an electrical power screener which will produce lower emissions. No increase in daily throughput volume was requested. An environmental review of this proposed permit modification, including a review of air quality impacts conducted by the City's air quality staff of the Department of Environmental Protection, found that it would not result in significant adverse environmental impacts.⁵³

Lastly, OCR's review of records for the A.J. Recycling facility included inspection reports dating back to the mid-1990s to FY 2015, which show that there have been no significant operating violations.

A.J. Recycling Facility's Effect on Air Quality

The complaint expressed concerns regarding the effect of facility operations on air quality and health in the South Bronx. To assess the air quality effects of the AJ Recycling facility operations, EPA reviewed a detailed air quality analysis performed by the facility's consultant for the permit modifications proposed in 2009-2010.

Specifically, OCR reviewed A.J. Recycling's Air Quality Analysis reports, dated September 14, 2009, and October 15, 2010 prepared by Galli Engineering, P.C. and Sandstone Environmental Associates, Inc. Both documents were developed to satisfy New York City's Environmental Quality Review (CEQR) obligations as outlined in the CEQR Technical Manual.

The CEQR is New York City's "process for implementing the State of New York's Environmental Quality Review Act (SEQRA), by which agencies of the City of New York review proposed discretionary actions to identify and disclose the potential effects those actions may have on the environment."⁵⁴ Furthermore, "SEQRA permits a local government to promulgate its own procedures, provided they are no less protective of the environment, public participation, and judicial review than provided for by the state rules."⁵⁵

⁵² Letter from Steven N. Brautigam, Assistant Commissioner, DSNY to Vicki Simons, Acting Director, OCR, EPA at page 4. (July 10, 2013).

⁵³ *Id.*

⁵⁴ City Environmental Quality Review Technical Manual, Revised May 2010, p. 1-1.

⁵⁵ *Id.*

The CEQR Technical Manual defines the criteria for proposed action conditions which mandate air quality evaluations.⁵⁶ The CEQR Technical Manual was adopted in 1991 and subsequently revised in 2001, 2010, 2012, and 2014. As part of the OCR inquiry, OCR did not review each of the CEQR Technical Manuals or the associated guidance documents to determine the operational compliance with the local requirements or re-run the air quality models to identify and confirm the accuracy of the results. Each of the air models was used in general accordance with the specifications outlined in the respective technical manual that was in effect at the time of the performance.

As highlighted in Table 1 below, A.J. Recycling's proposed modifications satisfied two (2) of the proposed action conditions that resulted in the performance of air quality evaluations for the site.

Table 1⁵⁷
CEQR Criteria for Scope of Work

Criteria	Proposed Action Conditions	Analysis Required
Actions generating 100 or more peak-hour auto trips	The maximum number of additional vehicular trips in an hour would be 10.	No
Actions resulting in a substantial number of diesel vehicle trips	Based on NYCDEP's current screening procedures, the threshold volume of truck trips would be total emissions equivalent to 2008 PM _{2.5} emissions from 12, 19, or 23 Heavy Duty Diesel Vehicles, depending on the roadway type. This is higher than the maximum hourly increment of 10 truck trips.	No
Actions using fossil fuels for HVAC systems	No fossil fuel would be used for HVAC.	No
Actions resulting in sensitive uses within 400 feet of a manufacturing or processing facility	No sensitive uses are within 400 feet of the locations of the existing or proposed areas of operations.	No
Actions resulting in any significant odors	The facility would not generate odors.	No
Actions that would include operation of manufacturing or processing facilities	The facility would generate combustion pollutants from equipment used to process the waste.	Yes

⁵⁶ *Id.*

⁵⁷ Gall Engineering, P.C and Sandstone Environmental Associates, Inc.; *AIR QUALITY ANALYSIS, A.J. RECYCLING, INC., 325 Faile Street Bronx, NY 10474*; September 14, 2009, p.3.

Actions that would create non-point sources such as particles from unpaved surfaces and storage piles (fugitive dust)	Non-point sources include fuel combustion and fugitive dust emissions from trucks and equipment on the site, as well as fugitive dust emissions from materials handling such as tipping, loading, and transfer of materials.	Yes
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Although no state permits were required for the proposed actions, the total emissions were calculated to determine the potential to emit (PTE)⁵⁸ and contrasted to the state and federal significant *de minimis* criteria to demonstrate conformance with the State Implementation Plan (SIP). As a result, both documents were subsequently submitted to the NYSDEC as part of the facility's engineering records.

The scope of the air quality analysis evaluated existing and background concentrations for carbon monoxides (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), inhalable particulate matter (PM₁₀, and PM_{2.5}); calculated air emissions from on-site vehicles and equipment for volatile organic compounds (VOC), CO, SO₂, NO₂, and PM (10 and 2.5); and modelled air emissions from on-site sources utilizing AMS/EPA Regulatory Model (AERMOD). The modelled air concentrations were compared to the National Ambient Air Quality Standards (NAAQS), as appropriate.

The 2009 and 2010 air quality analyses evaluated potential air impacts from a 'No Action' versus 'Action' scenario associated with A.J. Recycling's proposed physical re-configuration and operational alterations, which were identified as follows:

- Installation of a new picking station in the processing yard;
- An increase in the on-site storage capacity from 800 cubic yards to 1400 cubic yards;
- The addition of three property lots to contain one 2-story building, scales, and relocated queuing area;
- The replacement of a diesel screener with an electric picking line;
- The construction of a concrete pad for the picking station; and
- Rearrangement of on-site storage on existing lots.

The A.J. Recycling facility's current and proposed operational and physical location changes generated pollutants from equipment that processed the wastestream, and non-point sources of fuel combustion from equipment and materials handling.⁵⁹ No analysis of pollutant concentrations from off-site truck traffic was included as part of the evaluation, since the maximum hourly number of truck trips (26 truck trips per hour) fell below the screening thresholds for CO and PM_{2.5}. Similarly, due to the non-putrescible nature of the wastestream, C&D debris, no analysis of odors was completed.

⁵⁸ 6 NYCRR Part 201.

⁵⁹ From Table 1 above: Non-point sources include fuel combustion and fugitive dust emissions from trucks and equipment on the site, as well as fugitive dust emissions from materials handling such as tipping, loading, and transfer of materials.

The 2009 and 2010 air modelling reports were developed independently and in accordance with applicable state and local requirements at the time of the evaluations. The October 2010 air modelling report was performed in general accordance with New York City's technical requirements and guidance documents and appears to be generally consistent with EPA's modelling guidelines. Due to the replacement of the diesel-powered screener with an electric picking station, the emissions under the proposed 'Action' scenario were lower than the emissions under the 'No Action' scenario. **See Table 2 below.** On-site equipment contributed to the majority of the pollutant emissions of CO, SO₂, and nitrogen oxides (NO_x). These results additionally stated that the material handling process (e.g., storage piles) contributed to the PM₁₀ and PM_{2.5} emissions.

Table 2⁶⁰
No Action v. Action Scenarios

	No Action	Action	Difference
Carbon Monoxide			
On-site trucks	0.13	0.15	0.02
On-site equipment	1.40	1.23	-0.17
Piles	0.00	0.00	0.00
<i>Total</i>	1.53	1.38	-0.15
Volatile Organic Compounds			
On-site trucks	0.02	0.02	0.00
On-site equipment	0.54	0.51	-0.04
Piles	0.00	0.00	0.00
<i>Total</i>	0.57	0.53	-0.04
Sulfur Dioxide			
On-site trucks	0.00	0.00	0.00
On-site equipment	1.86	1.77	-0.09
Piles	0.00	0.00	0.00
<i>Total</i>	1.86	1.77	-0.09
Nitrogen Oxides			
On-site trucks	0.17	0.20	0.03
On-site equipment	8.00	7.60	-0.40
Piles	0.00	0.00	0.00
<i>Total</i>	8.17	7.80	-0.37
PM₁₀			
On-site trucks	0.02	0.06	0.04
On-site equipment	2.73	2.65	-0.08
Piles	3.18	3.06	-0.12
<i>Total</i>	5.93	5.77	-0.16

⁶⁰ The units in Table 2 are tons/year. The No Action and Action Scenarios represent A.J. Recycling's operations before and after the proposed physical re-configuration and operational alterations, respectively. The difference in emissions between these two scenarios is shown in the last column. Note that all numbers are rounded to two decimal points.

PM2.5			
On-site trucks	0.00	0.00	0.00
On-site equipment	0.44	0.36	-0.08
Piles	0.47	0.46	-0.01
<i>Total</i>	0.91	0.82	-0.09

Based on the October 2010 air quality assessment report, the 'Action' scenario is projected to result in lower air concentrations than the (current) 'No Action' scenario for all pollutants (*i.e.*, there will be an improvement in air quality). **See Table 3 below.** For those NAAQS pollutants for which the area is designated attainment (**see Regional Air Quality Status section below**), a total (cumulative) concentration estimate was made to ensure continued attainment of those NAAQS. Background concentrations were documented based primarily on monitoring data obtained from the IS52 air quality monitoring station located in the Bronx, New York, and the NYCDEP referenced guidance. (For those NAAQS pollutants for which the area is designated nonattainment (**see Regional Air Quality Status section below**)), no total concentration estimate was appropriate; *i.e.*, the only necessary criteria were for the project to ensure a net improvement in air quality.) **As seen in Table 3 below**, the predicted 'Action' impacts in combination with existing (background) air quality levels is below the applicable standard for all NAAQS attainment air pollutants.⁶¹ In addition, the predicted 'Action' impacts reflect lower levels compared to the (current) 'No Action' impacts for the NAAQS nonattainment air pollutants.

Table 3⁶²
Action and No Action Impacts with
Background (Existing) Air Quality Levels

Pollutant	Averaging Period	Standard	Back-ground Value	Maximum Modeled Value		Total		Difference (Action - No Action)
				No Action	Action	No Action	Action	
NAAQS Nonattainment Pollutants								
PM2.5	24-hr.	35	--	18	9	--	--	-9
	Annual	15	--	2	1	--	--	-1

⁶¹ In 2010, EPA adopted new, 1-hour standards for SO₂ and NO₂. The final rulemaking for the 1-hour SO₂ standard of 75 ppb (196 ug/m³) was published in the Federal Register on June 22, 2010 (effective date of standard was August 23, 2010). The final rulemaking for the 1-hour NO₂ standard of 100 ppb (189 ug/m³) was published in the Federal Register on February 9, 2010 (effective date of standard was April 12, 2010). In 2012, EPA adopted a new annual standard for PM_{2.5}. The final rulemaking for this annual PM_{2.5} standard of 12 ug/m³ was published in the Federal Register on January 15, 2013 (effective date of standard was March 18, 2013). Because the September 14, 2009 initial air quality modelling report preceded these standards, no information is available for this report regarding compliance with them.

⁶² The units in Table 3 are ug/m³ – micrograms per cubic meters.

NAAQS Attainment Pollutants								
PM10	24-hr.	150	60	66	61	126	121	-5
CO	1-hr.	10,000	3,550	1,483	475	5,033	4,025	-1,008
	8-hr.	40,000	2,290	354	192	2,644	2,482	-162
SO2	3-hr.	1,300	228	575	391	803	619	-184
	24-hr.	365	123	243	172	686	295	-71
	Annual	80	29	5	4	34	33	-1
NOx	Annual	100	56	21	16	77	72	-5

In light of the air quality demonstration that was documented through the performance of the air quality models, as well as an examination of site-specific information, there is insufficient evidence to show that the proposed emissions from the A.J. Recycling facility cause or contribute to unhealthy air quality levels. Furthermore, there is insufficient evidence to demonstrate that the proposed emissions from the A.J. Recycling facility cause or contribute to degradation in local air quality. Therefore, there is also insufficient evidence to conclude that any emissions from the A.J. Recycling facility's proposed modifications would contribute to air quality impacts in a discriminatory manner on the basis of race, color, or national origin.

Regional Air Quality Status

During the performance of the 2009 and 2010 air quality assessments for A.J. Recycling, the facility was located in a regional area that was classified by EPA as moderate non-attainment for the 1997 8-hour ozone standard and non-attainment for the 1997 annual PM_{2.5} standard. (On November 13, 2009, the regional area was also designated non-attainment for the 2006 24-hour PM_{2.5} standard.) Under the Clean Air Act (CAA), the State of New York is one of the northeastern states located within the EPA's designated Ozone Transport Region (OTR). States located within the OTR are required to develop state implementation plans (SIPs) and implement control measures for pollutants that form ozone. In addition, during this period, the regional area was classified as attaining the NAAQS for NO₂, SO₂, CO, and lead.

As part of the regional air quality review, OCR confirmed the current regional air quality status with EPA's Region 2 office. At this time, the Bronx is still designated moderate non-attainment for the 1997 8-hour ozone standard. (Note, on May 21, 2012, the area was also designated marginal non-attainment for the 2008 8-hour ozone standard.) For PM_{2.5}, however, the Bronx is part of an area that the EPA has redesignated to attainment of the PM_{2.5} NAAQS. This redesignation was published in the Federal Register on April 18, 2014, at 79 FR 21857 and was primarily based on air quality data from the 2010 – 2012 period which show PM_{2.5} concentrations are meeting the Standard. In fact, ambient air quality data recorded in the area since the 2007 – 2009 time period have been meeting the PM_{2.5} standards. Along with the redesignation request, New York State provided a "maintenance" plan, which demonstrates how the area will continue to meet the standard. The plan also contains provisions for additional

emission reductions in the unlikely event the area violates the PM_{2.5} standard in the future.

B. ALLEGATION 2 - DSNY'S RENEWAL OF PERMITS FOR WTSS IN THE SOUTH BRONX CONTRIBUTE TO THE CLUSTERING OF WTSS AND DISPROPORTIONATE ENVIRONMENTAL AND PUBLIC HEALTH BURDENS IN TWO PREDOMINATELY MINORITY COMMUNITY DISTRICTS WHILE BENEFITING NEW YORK CITY'S PREDOMINANTLY WHITE COMMUNITY DISTRICTS.⁶³

As previously stated, while OCR initially accepted the allegations against DSNY, they were not extensively investigated because DSNY ceased to be a recipient in 2000. However, OCR requested and received additional information regarding DSNY's current permitting and regulatory practices as well as some additional information from DSNY concerning WTSS in Community Boards 1 and 2.

Additional Information Regarding DSNY WTS Siting and Operational Requirements

DSNY's revised rules for the siting of new transfer stations are progressively more stringent for areas of the City where there are currently relatively higher numbers of transfer stations.⁶⁴ In particular, for the Bronx's Community Board 2 in which A.J. Recycling is located and which has a relatively high proportion of both industrial land and transfer stations, the rules prohibit an increase in new transfer stations' daily throughput capacity unless existing capacity is reduced elsewhere in the district by the same amount; prohibit new transfer stations in light manufacturing M1 zones; and require that any new transfer station be at least 600 feet from a residence district, park, school, or hospital, and at least 400 feet from another transfer station.⁶⁵

In May 2004, DSNY promulgated final rules that imposed stricter operational requirements regarding transfer stations, including those in Community Boards 1 and 2. These operational requirements include odor control equipment, negative air pressure, and dust control measures, which affected four putrescible WTSS, five Mixed C&D facilities, including A.J. Recycling, and five Fill Material Transfer Stations located in Community Boards 1 & 2. In April 2005, DSNY promulgated final rules governing the siting of transfer stations. The siting rules apply to new facilities, while the prohibition on additional throughput capacity applies to existing facilities. Under the new rules, DSNY does not entertain applications for new transfer station facilities in certain areas of the City, including in Bronx Community Board 2. The number of transfer stations in New York City and in the Bronx's Community Boards 1 and 2 has declined considerably since 1998. A.J. Recycling is in an M3 district

⁶³ Acceptance of Complaint letter from Anne Goode, Director, OCR, EPA to Commissioner Kevin Farrell, Commissioner, DSNY. (October 25, 1999).

⁶⁴ Letter from Steven N. Brautigam, Assistant Commissioner, DSNY to Vicki Simons, Acting Director, OCR, EPA at page 3. (July 10, 2013).

⁶⁵ *Id.*

where residential uses are prohibited, so there is no residential community immediately surrounding the A.J. Recycling facility. According to DSNY, the siting and operating rules have reduced transfer station impacts on the surrounding areas.⁶⁶

DSNY amended its rules to establish more stringent operation and maintenance requirements for existing and new transfer stations in 2005. These changes included:

- New requirements for tire-cleaning procedures and site paving to address the problem of tracking dirt onto public roadways from the facility.⁶⁷
- Facilities must install state-of-the art ventilation equipment to improve the air exchange rate at putrescible transfer stations and help the escape of odors. All putrescible transfer stations must install odor control equipment to neutralize odors rather than simply mask them with another scent.⁶⁸
- Facility owners are required to keep their drains clean and unclogged to prevent leachate or wastewater runoff onto public roadways and minimize the build-up of odor-causing residue.⁶⁹

Alternatives to Waste Transfer Stations

DSNY has entered into a long-term contract for the disposal of DSNY managed Municipal Solid Waste (MSW) from the Bronx via the Waste Management Harlem River Yard transfer station, which transports waste by rail to a landfill in Virginia. This contract has eliminated the use of long-haul transfer trailers for DSNY managed MSW from the Bronx, notably in Community Boards 1 and 2.⁷⁰

According to DSNY, the SWMP has led to improvements in the environmental conditions within Community Boards 1 and 2. For example, with the completion of DSNY's Marine Transfer Station on the North Shore of Queens, deliveries of municipal solid waste from Queens are put into containers for barge transport to an intermodal rail facility in New Jersey or Staten Island.⁷¹ This shift to barge and rail transport eliminates hundreds of truckloads per week of municipal solid waste that currently depart from Queens and traverse the Bronx *en route* to transfer and/or disposal facilities in New Jersey and New York State.⁷²

As previously noted, DSNY has contracted to construct a marine transfer station in the East River at East 91st Street in Manhattan.⁷³ When operational, the facility will

⁶⁶ See *id.* at 4-5.

⁶⁷ See *id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *id.* at 4.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

be able to accept commercial putrescible waste at night.⁷⁴ As Manhattan has no commercial waste transfer stations, DSNY anticipates that some of this commercial putrescible waste is currently going to facilities in Bronx Community Boards 1 and 2, and therefore the diversion of such waste to this proposed DSNY facility is expected to reduce commercial waste truck deliveries from Manhattan to putrescible waste transfer stations in these districts.⁷⁵

DSNY has implemented Best Available Retrofit Technology (BART) to its entire fleet of diesel waste and recycling collection trucks, pursuant to Local Law 39 of 2005, which has benefited the local environment near transfer stations used by DSNY, including the Harlem River Yard facility in Bronx Community Board 1.⁷⁶ Further, DSNY states that the use of ultra-low sulfur diesel, which DSNY pioneered, has resulted in a reduction in particulate matter emissions of 90% below 2006 model year levels, and 98% below the levels of old, unregulated diesel trucks, to levels comparable to emissions from compressed natural gas vehicles.⁷⁷

Moreover, DSNY's vendor for waste and recycling collection trucks, (Waste Management), has complied with Local Law 40 of 2005, which requires that non-road diesel equipment used primarily in the City to implement a solid waste disposal or recycling contract for the City of New York be retrofitted with BART.⁷⁸ According to DSNY, this has resulted in additional particulate matter emissions reductions in Bronx District 2.⁷⁹ As a result of these and other measures, DSNY asserts that the level of fine particulate matter, or PM2.5, has declined in the Bronx and in the rest of New York City to levels that now meet the NAAQS for this pollutant.⁸⁰

Letter of Agreement

In addition, OCR notes that on September 30, 2011, EPA Region 2 entered into a Letter of Agreement (LOA)⁸¹ with NYSDEC to share information about the NYSDEC's oversight of WTSs in the South Bronx, with particular attention to WTSs in Community Boards 1 and 2. The LOA is a mutual agreement intended to provide assurances to the residents of the South Bronx that there is appropriate oversight of the WTS, including recycling and C&D facilities, in their community, and that NYSDEC will provide pertinent information in this regard to EPA on a semi-annual basis. The LOA ended in July 2014 and included language that it may be extended if desired, by mutual agreement of the parties.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ LOA signed by Joseph Martens, Commissioner, and Steven C. Russo, Deputy Commissioner and General Counsel, NYSDEC and Judith Enck, U.S. EPA Region 2 Administrator, and Eric Schaaf, Regional Counsel of the U.S. EPA Region 2 (October 3, 2011).

III. CONCLUSION

As stated above, while OCR initially accepted the permit renewal process resulting in clustering of WTSs that have a disparate impact allegation against DSNY, that allegation was no longer the focus of OCR's inquiry after 2000 when DSNY ceased to be a recipient. In addition, the allegation concerning the Triboro Fibers facility at the 770 Barry Street location is now moot because this facility is no longer operational. As previously discussed in this letter, OCR has determined that it is closing the inquiry into the remaining allegations against the NYSDEC permitting of the A.J. Recycling facility as there is insufficient evidence to conclude that any emissions from the A.J. Recycling facility's proposed modifications would contribute to air quality impacts in a discriminatory manner on the basis of race, color, or national origin. This determination is not intended and should not be construed to cover any other issues that may exist and are not specifically addressed in this Letter.

Although EPA is closing the subject administrative complaint with no determination of discrimination in violation of Title VI of the Civil Rights Act of 1964, as specified above, the Agency is committed to protecting the health and environment of all communities, including the South Bronx. OCR is willing to provide technical assistance regarding compliance with federal non-discrimination obligations to any applicant for, or recipient of, federal financial assistance. Accordingly, OCR will be in contact with NYSDEC to discuss potential technical assistance opportunities.

Please note that the complainant, Congressman Serrano, may file a new complaint if he or his constituents acquire evidence that DSNY has resumed receipt of EPA federal financial assistance and future noncompliance concerns are identified. If you have any questions, we encourage you to contact the EPA offices in Region 2 to discuss this matter. Alternatively, if you have any questions about the civil rights matter, please contact Brittany Martinez, Case Manager, OCR External Compliance and Complaints Program, at (202) 564-0727.

Sincerely,



Velveta Golightly-Howell
Director

cc: Catherine McCabe, Deputy Regional Administrator
Rich Manna, Deputy Civil Rights Official
EPA Region 2

Elise Packard, Associate General Counsel
EPA Civil Rights and Finance Law Office (2399A)